no view at that stage on his evidence as to how he came to know of the existence of the hand-grenade. This is the view that the court takes of his judgment notwithstanding the submissions that were made on behalf of the prosecution this morning. The language used by the learned judge relates only to the evidence concerning the circumstances under which that statement was taken.

At the close of the case for the prosecution there was a submission of no case to answer. The judge over-ruled this submission and in his judgment on this issue he held in favour of a submission made on behalf of the prosecution that the evidence given on the issue of the admissibility of the statement should not be taken into account on the question whether there was a case to answer.

In his defence the appellant made an unsworn statement from the dock in the course of which he said:

"As to the facts of the hand-grenade I have already related to the court."

This was an obvious reference to the earlier evidence on oath concerning how he knew of the hand-grenade.

In the course of his judgment the judge said in reference to that evidence:

"I do not think I should consider that evidence for the purpose of this judgment."

The only other reference to the defence in the judgment is a repetition of what the appellant said from the dock. Nowhere does the judge express any view on the evidence given by the appellant to the effect that it was a friend who told him of the location of the hand-grenade, or appear to consider this evidence at all.

Counsel for the appellant submitted that the judge, in considering whether or not the offence was proved, should have taken into account the evidence given during the enquiry as to the admissibility of the statement, and that his failure to do so meant that the defence had not received consideration. For the prosecution it was submitted that the judge ruled correctly in refusing to take into account the evidence in question.

This is apparently a novel point in the case of a trial by a judge without a jury, and neither counsel could submit any authority. It is not necessarily a simple question. For the evidence on the issue of admissibility of a statement may include evidence that is inadmissible on the trial for the offence. The issue of the admissibility of a statement generally takes the form of a separate enquiry. To that extent, the circumstances are different from those in which, in the course of a trial without this separate enquiry, evidence may become admissible because it is relevant to a particular issue, but, once admitted, become part of the evidence for all purposes.

However, in this trial this issue does not require further consideration because there was an added factor introduced by the fact that the appellant referred back to his evidence on oath concerning the hand-grenade itself. In the opinion of this court, this statement amounted in effect to repeating to the court the explanation he had given in the witness-box and therefore this explanation had become part of his defence as expounded in his unsworn statement. It should therefore have had consideration before judgment was delivered.

This morning the Deputy Public Prosecutor has submitted that this defence did have consideration in considering the admissibility of the statement and therefore, if the learned judge had considered it again, the result of the trial would have been no different. The language used by the judge certainly does not make this clear, and as I have already said, in the opinion of the court it does not mean that the judge considered this evidence, which related only to the substantive defence and not to the question of the admissibility of the statement. Setting this against the measured words in the final judgment that this evidence is not to be taken into account in considering the issue of guilty or not guilty, there is nothing in the record to persuade this court that this defence did have consideration.

As it was the only defence put forward, the position is that the defence has not been considered at all. In accordance with established principles a conviction so arrived at cannot stand. Consequently this appeal must be allowed, the conviction and sentence set aside and a new trial ordered.

As there will be a new trial, this court will not review the other ground of appeal argued, as this would involve expressing views on other important aspects of the evidence, as given at the first trial.

Appeal allowed. New trial ordered.

CHIN BOON KENG v. SRI JAYA TRANSPORT CO. (P.T.M.) LTD. & ANOR.

[F.C. (Barakbah C.J. (Malaya), Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) July 15, 1965]

[K.L. — Federal Court Civil Appeal No. 5 of 1965]

Damages — Leg — Amputation above knee — Trend of awards.

This was an appeal against the decision of the High Court noted at [1965] 1 M.L.J. xii. The appellant, a schoolboy aged 13, lost his leg by amputation above the knee as a result of severe injuries received when he was knocked down by the respondent's motor-bus. The parties were equally to blame and the learned judge awarded $11,698.30 comprising of $4,198.30 special damages and $7,500 as general damages. On appeal,

Held: (1) the award for general damages should be in line with a discernible trend or pattern of awards in reasonably comparable cases;

(2) the general damages should be increased to one half of $35,000 and as the amount of special damages was not disputed, the award should be one half of $4,198.30. Total amount of damages $19,599.15.

Case referred to:—

(1) *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [1964] M.L.J. 463, P.C.

FEDERAL COURT.

Denis Murphy for the appellant.

Morris Edgar for the respondents.

Cur. Adv. Vult.

Barakbah C.J. (Malaya): This appeal arises out of an accident which occurred near the bus stop at Jalan Gasing, Petaling Jaya. The plaintiff, who is a student at the Catholic High School, Petaling Jaya, and was about 13 years old at the time of the accident, was on 12th June 1963 standing on the roadway near the bus stop when he was negligently knocked down by a motor-bus owned by the first defendant and driven by the second defendant as the bus was stopping to collect passengers. The rear near-side wheel of the bus ran over the left leg of the plaintiff causing severe injuries, as a result of which the plaintiff's left leg had to be amputated above the knee. The defendants denied negligence; alternatively they contended that even if they were negligent, the accident was contributed to by the negligence of the plaintiff.

The learned trial judge found that both parties were equally negligent and awarded damages in a total sum of $11,693.30. Against this decision, the plaintiff has now appealed.

P.W.3, the boy, stated in his evidence:

"Before bus came I was standing inside bus stop. When a bus was coming I was standing outside crash barrier. The bus which knocked me came. I was standing at the front. I marked in black 'X' on sketch plan. Bus came in towards the kerb. When it got near it swerved out. The bus was going fast. Usually bus stops in front of bus stand. It did not stop there on that day. The front of bus came near me. I turned to go back but I could not as there were people behind me. Near side rear of bus knocked me...."

Under cross-examination he said that there were a lot of other children there. He was the only one knocked down. Before the bus came he was in front of the barrier. He then walked further.

P.W.4 who is a nurse at the Assunta Hospital said that on that day she was waiting at the bus stand for the same bus. There were a lot of boys there. She saw the bus approaching. It came fast, passed the bus stand and stopped. She heard a commotion and saw a boy lying parallel to the road in a pool of blood. She attended to him. She also stated that she did not see the accident. When cross-examined she said that she did not see the boys running towards the bus. She added that some were on the pavement and some on the road.

According to the second defendant, as he approached the bus stand he saw a lot of children there, about 70 in number. He slowed down and stopped past the bus stand — slightly beyond it. He stopped the bus at an angle because he wanted to avoid children running into the bus. He heard children shriek. The conductor called him down and he saw a boy lying on the road at the back of the near-side rear wheel. The bus did not mount the pavement and the speed was about 4 to 5 miles per hour.

It would appear from the evidence that the boy P.W.3 was on the road when the bus approached. He moved forward and when he found that the bus was coming near him he tried to get back but could not as there were people behind him, in the result he was knocked down by the bus. In my view, it is clear that P.W.3 was negligent but there was his evidence supported by P.W.4 that the bus was running fast, and the defendant knew there were a lot of children here. In the circumstances I agree with the learned trial judge that both P.W.3 and the defendant were equally to blame.

With regard to damages, the learned judge found the facts in the present case almost on all fours with those in *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.*[1] and made an award of $11,698.30 comprising of $4,198.30 special damages and $7,500 as general damages. With due respect to the learned judge, I am unable to agree with the amount awarded for general damages. As it was decided in *Jag Singh's* case that the award should be in line with a discernible trend or pattern of awards in reasonably comparable cases, I consider that the general damages should be increased to one half of $35,000 and as the amount of special damages was not disputed, the award should be one half of $4,198.30. I would therefore dismiss the appeal on the question of contributory negligence and allow the appeal on the question of damages as stated above. The total amount of damages awarded will be $19,599.15. As the appellant has not wholly succeeded in his appeal, I would allow ¾ of the costs of this appeal to the appellant.

Wee Chong Jin C.J. (Singapore) and **Tan Ah Tah F.J.** concurred.

Solicitors: *Murphy & Dunbar; Morris Edgar & Co.*